

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Special Access Rates for Price Cap)	WC Docket No. 05-25
Local Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking)	RM-10593
To Reform Regulation of Incumbent)	
Local Exchange Carrier Rates for)	
Interstate Special Access Services)	

COMMENTS OF EMBARQ

Embarq

David Bartlett
Jeffrey S. Lanning
Brian Adkins
701 Pennsylvania Ave. N.W.
Suite 820
Washington, DC 20004
(202) 393-7113

Craig T. Smith
5454 W. 110th Street
Overland Park, KS 66211
(913) 345-6691

August 8, 2007

TABLE OF CONTENTS

SUMMARY

I.	INTRODUCTION.....	1
II.	FACILITIES BASED COMPETITION FOR SPECIAL ACCESS EXISTS IN EMBARQ'S MARKETS.....	5
III.	INTERSTATE SPECIAL ACCESS RATES ARE REASONABLE AND RATES OF RETURN ARE NOT UNREASONABLY HIGH.	8
	A. DS1 CHANNEL TERMINATION RATES ARE REASONABLE AND THE RATES ARE REFLECTIVE OF OR BELOW COST.....	8
	B. DS3 RATES HAVE GENERALLY DECREASED SINCE THE ADOPTION OF PRICE CAPS.....	9
	C. ARMIS DATA IS UNRELIABLE FOR ANY RATE OF RETURN ANALYSIS.....	10
IV.	THE FCC CANNOT REINSTATE THE PRODUCTIVITY OFFSET (X-FACTOR).	11
V.	PRICING FLEXIBILITY WORKS WHERE GRANTED, BUT MANY COMPETITIVE MARKETS ARE NOT GRANTED PRICING FLEXIBILITY BECAUSE OF FLAWS WITH THE TRIGGERS.	13
VI.	THE FCC SEEKS COMMENTS ON THE FOLLOWING QUESTIONS.....	17
	A. WHAT EFFECT, IF ANY, HAVE THE POST <i>SPECIAL ACCESS NPRM</i> MERGERS AND OTHER INDUSTRY CONSOLIDATION (<i>VERIZON-MCI, AT&T-SBC-BELLSOUTH, SPRINT-NEXTEL</i>) HAD ON THE AVAILABILITY OF COMPETITIVE SPECIAL ACCESS FACILITIES AND PROVIDERS AND ON SCALE ECONOMIES OR THE PROFITABILITY OF SPECIAL ACCESS SERVICES?	17
	B. HOW DOES SPECIAL ACCESS PRICING AFFECT THE PRICE AND AVAILABILITY OF WIRELESS SERVICES AND THE INVESTMENT IN AND DEPLOYMENT OF WIRELESS NETWORKS?	19
	C. WHAT ARE THE APPROPRIATE METHODS THAT MAY BE USED TO ESTIMATE THE COSTS OF SPECIAL ACCESS FACILITIES, INCLUDING WHETHER ANY MODELS MAY APPROPRIATELY BE USED TO ESTIMATE SUCH COSTS?	20

D.	WHAT IS THE PROJECTED COST PER CUSTOMER TO DEPLOY THE SIGNIFICANT UPGRADES CARRIERS HAVE MADE TO THEIR NETWORKS AND FACILITIES TO ENABLE HIGH CAPACITY SERVICES?	20
E.	ARE DS1 SPECIAL ACCESS CHANNEL TERMINATIONS BETWEEN THE ILEC END OFFICE AND THE CUSTOMER PREMISE IN THE SAME PRODUCT MARKET AS DS3 AND OCN CHANNEL TERMINATIONS? IF NOT, SHOULD THE COMMISSION GO EVEN FURTHER AND SUBDIVIDE OPTICAL CHANNEL TERMINATIONS INTO LOW CAPACITY OCN CHANNEL TERMINATIONS (SUCH AS OC3) AND HIGHER CAPACITY OCN CHANNEL TERMINATIONS?	21
F.	HOW MUCH CAPACITY DO CARRIERS BELIEVE IS NECESSARY TO JUSTIFY BUILDING NEW FACILITIES?	23
G.	IS THERE A LACK OF COMPARABLE ALTERNATIVES TO ANY SPECIFIC ILEC SPECIAL ACCESS SERVICES AND IF SO, IS THAT A DEMONSTRATION THAT THE MARKET FOR THE PARTICULAR SPECIAL ACCESS SERVICE IS NOT COMPETITIVE?	24
H.	HAVE ANY CHANGES IN THE MARKET AFFECTED THE AVAILABILITY OF COMPARABLE ALTERNATIVES?	24
I.	THE COMMISSION ALSO SEEKS COMMENT ON THE ANALYSIS AND FINDINGS IN THE <i>GAO REPORT</i> SUMMARIZING GAO'S REVIEW OF COMPETITION IN THE MARKET FOR SPECIAL ACCESS SERVICES.	25
VII.	CONCLUSION	26

ATTACHMENTS:

ATTACHMENT 1 – DECLARATION OF DR. BRIAN K. STAIHR

ATTACHMENT 2 – DECLARATION OF MICHAEL JEWELL

ATTACHMENT 3 – TIME WARNER TELECOM <http://www.twtelecom.net/>

ATTACHMENT 4 – COX http://www.coxbusiness.com/systems/nv_lasvegas/index.html

ATTACHMENT 5 – FIBERTOWER <http://www.fibertower.com/corp/news-press-releases-080107.shtml>

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Special Access Rates for Price Cap)	WC Docket No. 05-25
Local Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking)	RM-10593
To Reform Regulation of Incumbent)	
Local Exchange Carrier Rates for)	
Interstate Special Access Services)	

SUMMARY

The interstate special access market place has become competitive and competition is thriving. Rates are beginning to approximate true economic cost and are more often than not, decreasing – as they should in a market driven by competition and economic cost, not regulatory artifice.

In the *LEC Price Cap Order*, the *Pricing Flexibility Order*, and the *CALLS Plan*, the Commission, consistent with the direction in the Telecommunications Act of 1996 and with judicial approval, has moved along the path of eliminating the outdated cost-plus system of regulating LEC access rates and replaced it with a system of incentive-based regulation and a system that provides flexibility from generally available, averaged tariffed rates where facilities-based competition exists.

Absent factual evidence that price cap regulation, the *CALLS Plan*, and pricing flexibility are not working as intended, there is no sustainable basis for the Commission to reject those

systems or reverse positions. To date, there is no such factual evidence on the record, and without data collection requirements for competitive providers of voice, data, and Interconnected VoIP services (e.g. fixed and mobile wireless, cable, CLEC, WiFi, and Interconnected VoIP) the Commission has been unable to establish a fully developed record.

What evidence exists demonstrates that price caps and, where available, pricing flexibility are working as intended – competition has developed and is growing and rates are approximating cost. However, there are flaws with the current systems, the systems do not always recognize when facilities-based competition exists, thus being under-inclusive of the areas where pricing flexibility should be granted and the systems create an artificial price floor through the requirement that ILECs publicly file their pricing flexibility contract tariffs.

However, in the areas where pricing flexibility has been granted, carriers are taking advantage of pricing flexibility contract tariffs to obtain critical services at rates, terms, and conditions more suited to their individual needs and circumstances than those provided by averaged, generally available tariff rates, terms, and conditions. Misguided and unfounded allegations of excessive rates and rates of return are not enough to support a reversal of policy.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the matter of)	
)	
Special Access Rates for Price Cap)	WC Docket No. 05-25
Local Exchange Carriers)	
)	
AT&T Corp. Petition for Rulemaking)	RM-10593
To Reform Regulation of Incumbent)	
Local Exchange Carrier Rates for)	
Interstate Special Access Services)	

COMMENTS OF EMBARQ

I. Introduction.

Is the current price cap system of establishing interstate special access rates beginning to replicate a competitive market and has the Commission's pricing flexibility rules worked as intended? Those are the critical questions teed up by the Commission in the Public Notice seeking a refresh of the record in the *Special Access NPRM and AT&T Rulemaking*.¹ The answer to both questions is a resounding yes!

The interstate special access marketplace has become competitive and that competition is thriving. Rates approximate true economic cost and are more often than not decreasing – as they should in a market driven by competition and economic cost, not regulatory artifice.

¹ *Special Access Rates for Price Cap Local Exchange Carriers, A&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, 20 FCC Rcd 1994 (2005) (“*Special Access NPRM*”).

In the *LEC Price Cap Order* the Commission sought to eliminate the outdated cost-plus system of regulating LEC access rates and replace it with a system of incentive-based regulation that would “reward companies that become more productive and efficient, while ensuring that productivity and efficiency gains are shared with ratepayers.”² Then, in the Telecommunications Act of 1996, Congress directed the Commission to:

promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.³

In response, in 1999 the Commission adopted its *Pricing Flexibility Order* to further cut the ties to outdated cost-based rate of return regulation as the market for interstate special access services became increasingly competitive by allowing ILECs increased rate flexibility while at the same time ensuring that flexibility was not used to deter competitive entry or raise rates to unreasonable levels where competitive alternatives do not exist.⁴ Then, in 2000 the Commission adopted the *CALLS Plan* to phase out implicit subsidies in access rates and move toward a more market-based approach to rate setting.⁵

² *Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6787 (1990) (“*LEC Price Cap Order*”), *aff’d* *Nat’l Rural Telecom Ass’n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

³ Pub. L. No. 104-104, 110 Stat. 56, 56 (Introductory Statement).

⁴ *Access Charge Reform*, 14 FCC Rcd 14221 (1999) (“*Pricing Flexibility Order*”), *aff’d* *WorldCom v. FCC*, 238 F.3d 449 (D.C. Cir. 2001).

⁵ *Access Charge Reform*, 15 FCC Rcd 12962 (“*CALLS Plan*”) *aff’d in part, rev’d in part, and remanded in part*, *Texas Office of Public Util. Counsel v. FCC*, 265 F.2d 313 (5th Cir. 2001), *cert. denied*, *Nat’l Ass’n of State Util. Consumer Advocates v. FCC*, 535 U.S. 986 (2002), *on remand*, *Access Charge Reform*, 18 FCC Rcd 14976 (2003).

Along each step of this path toward market based rates for interstate special access rates, the Commission has received judicial approval.⁶ Absent factual evidence that price cap regulation, the *CALLS Plan*, and pricing flexibility are not working as intended, there is no sustainable basis for the Commission to reject those systems or reverse positions. To date, there is no such factual evidence on the record, and without data collection requirements for competitive providers of voice, data, and Interconnected VoIP services (e.g.; fixed and mobile wireless, cable, CLEC, WiFi, and Interconnected VoIP) the Commission has been unable to establish a fully developed record.

As the recent *GAO Report*⁷ and even more recent Progress & Freedom Foundation report⁸ concluded, a complete record upon which to justify and sustain changes will not be available until the Commission collects the necessary data from all market participants. This conclusion was recently echoed in a letter from U.S. Representative Shelly Berkley to Commission Chairman Kevin J. Martin, who, after noting that cable and fixed wireless providers are often overlooked when the Commission considers competition, stated: “I urge you to go beyond the

⁶ The reversal and remand in part of the *CALLS Plan* was solely concerned with whether 6.5% was the right percent for the X-Factor, which under the *CALLS Plan* was no longer a true productivity factor, but simply a transitional mechanism to produce lower rates. On remand, the Commission again adopted 6.5%. *Access Charge Reform*, 18 FCC Rcd 14976 (2003).

⁷ Government Accountability Office, *FCC Needs to Improve its Ability to Monitor and Determine the Extent of Competition in Dedicated Access Services*, Report 07-80, (Nov. 2006) (“*GAO Report*”)

⁸ Scott Wallsten, *Has Deregulation Affected Investment in Special Access?* (2007) The Progress & Freedom Foundation, <http://pff.org/issues-pubs/pops/pop14.16specialaccessempiricalanalysis.pdf> (“*Wallsten*”).

regulatory filings of the parties of interest and affirmatively seek out data from all the competitors sufficient to make a rigorous apples-to-apples comparison".⁹

What evidence exists, demonstrates that price caps and pricing flexibility are working as intended. Competition has developed and is growing and rates are approximating costs. Carriers are taking advantage of pricing flexibility contract tariffs to obtain critical services at rates, terms, and conditions more suited to their individual needs and circumstances than those provided by averaged, generally available tariff rates, terms, and conditions. Misguided and unfounded allegations of excessive rates and rates of return are not enough to support a reversal of Commission policy and orders.¹⁰ Nor is it enough to support such a reversal that some special access customers are not happy with the rates available in competitive markets for particular access services or, that in limited cases, some rates have increased.¹¹ The FCC's role is not to guarantee that a carrier's business plan succeeds.

⁹ *LAWMAKER CALLS FOR FULL SPECIAL ACCESS VIEW*, TRDaily, Telecommunications Reports, August 7, 2007.

¹⁰ Indeed, if rates of returns were truly as excessive as some have claimed, capital dollars and competitors would be literally flooding the market at any even faster rate than is occurring today.

¹¹ In fact, the Commission anticipated that pricing flexibility would likely trigger some rate increases:

We recognize that the regulatory relief we grant upon a Phase II showing may enable incumbent LECs to increase access rates for some customers. We conclude that this relief nonetheless is warranted upon a Phase II showing for two reasons. First, some access rate increases may be warranted, because our rules may have required incumbent LECs to price access services below cost in certain areas. Second, we find that a Phase II showing is sufficient evidence that competitors' market presences have become significant, and that the public interest is better served by permitting market forces to govern the rates for the access services at this point. In addition, we note that these services generally are purchased by [*14302] IXCs, not individual end users. IXCs are sophisticated purchasers of telecommunications services, fully capable of finding competitive alternatives where they exist and determining which competitor can best meet their needs.

Pricing Flexibility Order at 14301, ¶ 155.

II. Facilities based competition for special access exists in Embarq's markets.

Facilities based competition for special access services exists in Embarq's markets today. On a DS0 equivalent basis, 50% of special access lines have both CLEC and a Cable alternative and 75% have either a CLEC or a Cable alternative. At least 10 competitive special access providers are present in four of Embarq's largest markets (i.e. Nevada; Florida; North Carolina; and Tennessee/Virginia).¹² Most of Embarq's markets have 5 competitors. This growing competition places downward pressure on Embarq's rates and is a factor in pricing flexibility contract tariff negotiations as well as overall in Embarq's pricing strategies.

The emergence of the cable companies in the special access market is perhaps one of the most compelling factors in assessing the current and near term future of the competitive landscape. In fact, Jim Kenny, vice president of sales and marketing and business development for GeoResults, the market research firm that analyzed data for the *GAO Report*, and Ted Shields, GeoResults' president and CEO, were recently quoted in a TELEPHONYONLINE article on wireless backhaul as saying:

But competitive options will become more well-known, according [to] GeoResults' Kenny. "In the future, mobile carriers will spread their backhaul traffic of [sic] two or three different providers," he said. "What will drive it is pure, rational economics – who can get there first with the best price."

In some case[s], that will be the ILECs – newly sensitive to the competition – but often it could be cable TV companies that have fiber facilities near cellular towers, or the CLECs. "Cable TV companies will own their own towers," said GeoResults' Shields. "Or they'll get fiber to towers in a new market before someone else."¹³

¹² These four markets provide over 60% of Embarq's yearly special access revenues.

¹³ Dan O'Shea, *Backhaul moves forward*, (2007) TELEPHONYONLINE, http://telephonyonline.com/mag/telecom_backhaul_moves_forward/.

However, as noted above, specific information about competitive carriers (e.g., fixed and mobile wireless, cable, CLEC, WiFi, and Interconnected VoIP) is difficult, if not impossible, to come by. These competitors are not required to file the same data with the FCC as ILECs are nor are they required to publicly file their customer contracts. And, they rarely divulge competitive information to Embarq (or presumably to any ILEC.) However, through discussions with customers Embarq has learned of some, although certainly not all, special access opportunities that Embarq has lost over the past two years to competitive carriers, including in some instances to the incumbent cable companies.¹⁴ The lost special access opportunities include large wireless and wireline customers throughout Embarq's territory, not just its non-rural ILEC in Nevada.¹⁵

While few competitive carriers divulge specific information about their network or customers, their web sites and news releases are replete with information about their competitive efforts and successes. For instance, on June 6, 2006, Time Warner Telecom Inc. ("TWT") announced a working arrangement with Overture Network to provide Ethernet services to business customers nationwide.¹⁶ Then on August 2, 2007, TWT issued a press release announcing it had surpassed 10,000 Ethernet Ports in service for Enterprise Customers.¹⁷ According to their web site, TWT also provides, among other services, collocation and IP-VPN services in 75 metropolitan areas, including Embarq's Las Vegas territory.

¹⁴ See, Declaration of Michael Jewell, attached hereto as Attachment 2 and incorporated herein. Due to customer proprietary concerns, the names of the individual customers have been removed.

¹⁵ All of Embarq's Incumbent Local Exchange Carriers except for the Nevada operations of Central Telephone Company are Rural Telephone Companies as that term is defined in Section 3(37) of the Act (47 U.S.C. § 153(37)).

¹⁶ <http://www.twtelecom.com/>

¹⁷ See, [http://www.twtelecom.net./](http://www.twtelecom.net/), as attached hereto as Attachment 3.

Cox, the incumbent cable provider in Embarq's Las Vegas, Fort Walton Beach, Florida and Ocala, Florida territories, has the network already in place to provide interstate special access type services and, as evidenced by the attached Declaration of Michael Jewell,¹⁸ has had success in winning special access business away from Embarq. According to Cox's Las Vegas website, Cox provides "Cox Carrier Access Service" which is the "ideal solution for secure and reliable connections to your stand-alone or integrated voice and data customers."¹⁹

Additional examples of both intra-modal and inter-modal special access competitors flourishing in Embarq's markets include:

- **FiberTower Corporation.** FiberTower Corporation has facilities capable of serving customers in Embarq's Fort Meyers and Orlando, Florida markets and has spectrum assets in Raleigh, North Carolina and Greenville, South Carolina. According to its website, its networks offer carrier-grade performance, point-to-point and point-to-multipoint capabilities, and TDM to Ethernet service platforms. On August 1, 2007 FiberTower Corporation announced that it had entered into an agreement with Sprint Nextel (NYSE: S) to provide Ethernet backhaul services in seven of the wireless carrier's initial WiMax launch markets.²⁰
- **Citynet.** Citynet owns an extensive wireline network providing services to carriers throughout part of Embarq's territory in Indiana, Ohio, Pennsylvania, Virginia, and Tennessee. Citynet provides DS3 through OC-192 private line services.²¹
- **DukeNet Communications.** DukeNet Communications, an affiliate of Duke Energy Company. Provides T1s and DS3 in parts of Embarq's North and South Carolina territories.²²

¹⁸ Attachment 2.

¹⁹ See, http://www.coxbusiness.com/systems/nv_lasvegas/index.html, attached hereto as Attachment 4.

²⁰ See <http://www.fibertower.com/corp/news-press-releases-080107.shtml>, as attached hereto as Attachment 5.

²¹ <http://www.citynet.net/carrierproducts.cfm>.

²² <http://www.dc.duke-energy.com/content/products/dn05.asp>.

- **Kent Technologies.** On August 15, 2006, Kent Technologies, which is headquartered in Embarq's service territory in Bonita Springs, Florida and which competes with Embarq in USAC's Schools and Library E-Rate program, announced construction of a fiber optic network, KentConnect, to provide Metropolitan Ethernet services to businesses in southwest Florida;²³
- **TelCove.** On April 7, 2006, TelCove, another entity that has competed with Embarq in the E-Rate program, announced that with 2,700 route miles connecting 14 Florida markets (including Tallahassee in Embarq's territory) that it was the dominant competitive provider in Florida of metro and intercity services, including Ethernet, to enterprise customers and carriers.²⁴ (On July 24, 2006 TelCove was acquired by Level 3, another facilities-based competitor of Embarq.)

Clearly, the known information demonstrates robust competition from competitors deploying an array of technologies. A fully developed record, a must for there to be a possible sustainable basis for rolling back the current systems of price caps and pricing flexibility, would only more fully support that there is no need for and no basis for such a roll back.

III. Interstate Special Access rates are reasonable and rates of return are not unreasonably high.

A. DS1 channel termination rates are reasonable and the rates are reflective of or below cost.

Embarq's DS1 rates are reasonable and often lower than the true economic cost of providing the service. The simple truth is that the cost to build a DS1 does not decline proportionately versus the cost to build a higher capacity pipe (as some might suspect given the significant decline in relative bandwidth). For example, while the relative bandwidth decline in a fiber cable carrying a DS3 circuit versus the same cable carrying a DS1 circuit is a factor of 28, the underlying fiber cable cost is largely unaffected.

²³ <http://www.kenttech.com/news.php?id=49>.

²⁴ <http://www.telcove.com/press/pr040706.asp>.

Combining this simple truth about cost with the reality that carriers purchasing DS1s are not enjoying the efficiencies and savings that can be generated for carriers that are able to aggregate larger amounts of traffic (and consequently receive more revenue)²⁵ on higher capacity pipes, results in some carriers being unhappy with the rates for DS1s. However, that does not make those rates or rates of returns on DS1 services excessive.

Furthermore, it must be remembered that the generally available, month by month tariffed rate is not what prevails for most carrier purchasers. These are large, sophisticated customers that use their buying power to take advantage of tariffed volume and term discount plans and, where available, pricing flexibility contract tariffs. Wireless carriers take advantage of Embarq's special access discount plans more than any customer segment (e.g., IXC, CLEC, ISP, or End User) with 88% of wireless special access revenues associated with discounts.

B. DS3 rates have generally decreased since the adoption of price caps.

Consistent with what one would expect in a competitive market where price cap regulation is starting to drive rates to market-based pricing, DS3 rates are generally going down since the adoption of price caps, sometimes dramatically. In Embarq's three largest ILEC operations -- the pricing flexibility MSAs in Nevada, Florida, and North Carolina -- rates under the 5-year option in Embarq's Premier plan for DS3 Channel Terminations have declined by 17% to 52% since the adoption of pricing flexibility.

²⁵ The Commission has noted this economic truth in a comparison of DS3s versus higher capacity OCn pipes. ("The potential revenue stream associated with a single DS3 is far less than the revenue stream associated with aggregating traffic that requires an OCn circuit." *Id.*, at 17218, n. 1195.) The same holds true for DS1 pipes versus DS3 and OCn.

August 8, 2007

DS3 CT - Zone 1			
State	0-3 Mile	0-3 Mile	Percent
	Jul 01	Jul 06*	Decrease
FL	\$1,075	\$ 600	-44%
NC	\$1,050	\$ 500	-52%
NV	\$ 851	\$ 710	-17%
* Rates shown in states with multiple MSAs are from Orlando, FL and Fayetteville, NC			

B. ARMIS data is unreliable for any rate of return analysis.

ARMIS data provides nothing in the way of determining a real economic rate of return for interstate special access services. Special access revenues have grown tremendously, due largely to the introduction of newer SONET and packet-switching services. Yet the separations factors that allocate cost prior to reporting data in ARMIS have been frozen since 2001.²⁶ Thus the revenue growth from SONET and packet-switched services is not appropriately matched to their real cost. This results in historical costs being mismatched with real world revenue, producing unreliable accounting rates of return. Furthermore, ARMIS data is unreliable because it is derived from separations factors that allocate common cost across multiple services (regulated and non-regulated) and across interstate and intrastate jurisdiction in accordance with regulatory direction, which are not reflective of today's true business drivers. Even the Commission acknowledges this arbitrary cost allocation raises questions about the validity of using ARMIS data derived from the separations factors to develop an accounting rate of return for one subset of services – special access:

²⁶ *Jurisdictional Separations and Referral to the Federal-State Board*, 16 FCC Rcd 11382 (2001).

Even if the overall accounting rate of return has evidentiary value for these purposes, we also seek comment on whether an accounting rate of return for a subset of service, *i.e.*, the special access basket of services, is meaningful to this inquiry. LECs incur costs for many assets and activities that are common to supplying multiple services. The allocation of these common costs to multiple services according to our accounting rules necessarily reflects policy judgments that may not reflect how price cap LECs would allocate common cost if they operated in fully competitive markets.²⁷

Additionally, the separation factors do not recognize the difference between loops; a broadband loop (e.g., DS3 loop), is treated no different from a loop used for plain old residential voice service. All are treated the same for allocation purposes even though they each can have vastly different uses. And given the freeze on separations, ARMIS data no longer reflects the network that is in place today; for instance the cost of the numerous DSLAMs that have been recently deployed in the current network, as well as that for other broadband equipment is allocated to the intrastate jurisdiction while the revenue for services provided with this newer network is in the interstate jurisdiction.²⁸ Such mismatches in cost and revenues make the use of ARMIS data derived from the jurisdictional separation factors unreliable at best.

IV. The FCC Cannot Reinstate the Productivity Offset (X-Factor).

There is no legal or economic justification for a return to a true, economic, productivity factor. Nor, in the absence of a total overhaul of the current Special Access scheme, an overhaul

²⁷ *Special Access NPRM* at 2015, ¶ 62.

²⁸ While ARMIS and jurisdiction separations are broken, this is not the docket to address the necessary corrections. Rather, those corrections are the subject of the *Jurisdictional Separations and Referral to the Federal-State Joint Board*, CC Docket No. 80-286. Most recently, that docket resulted in an Order and Further Notice of Proposed Rulemaking where it was determined that “more time is needed to study comprehensive reform...” See, *Jurisdictional Separations and Referral to the Federal-State Joint Board*, 21 FCC Rcd 5516, 5523, ¶ 16 (2006).

that the Commission lacks a record for, is there justification for adopting some new transitional mechanism to replace the regime left in place at the expiration of the CALLS Plan.

The original price cap regime included a productivity offset – the X-factor; intended to represent the amount by which LEC productivity exceeded that of the economy as a whole. The CALLS Plan eliminated the productivity factor (“During the five-year term of the CALLS Proposal, the X-factor as adopted herein will not be a productivity factor as it has been in past price cap formulas.”)²⁹ Rather, the Commission adopted a “transitional mechanism to reduce rates over a period of time.”³⁰ That time period has now expired and there is no legal basis or record to support changes now. What the industry is now left with is nominal price cap rates that are frozen, but not in real terms. The rates are tied to inflation thus even while the nominal rates remain constant, because of the tie to inflation, more access services can be bought with the same dollars.

As discussed in the attached declaration of Dr. Brian K. Staihr (Attachment 1, attached hereto and incorporated herein), the only way in which the re-imposition of a productivity offset on special access services is justifiable, in an economic sense, is if there is clear evidence that productivity gains associated with the provision of special access have exceeded and are expected to continue to exceed nationwide productivity gains. As explained in the declaration, no such evidence exists. As Dr. Staihr explains, it is technically impossible to accurately calculate productivity gains specific to special access services, given the non-separable nature of the LEC production function. And any attempts to produce such a measure would quickly devolve into guesswork due to the arbitrary nature of allocations of shared, joint and common

²⁹ *CALLS Plan*, at 13028, ¶ 160.

³⁰ *Id.*

inputs that such a calculation would require. Furthermore, broader measures of productivity that are available from public sources demonstrate that LEC productivity has not exceeded nationwide productivity in recent years. Accordingly, there is no empirical support for the notion that re-imposing a productivity offset is justified on economic terms.

V. Pricing Flexibility works where granted, but many competitive markets are not granted pricing flexibility because of flaws with the triggers.

In the MSAs where pricing flexibility has been granted, it is working as intended. The presence of competition is increasing the options for carriers. As *Wallsten* finds in his study:

I find that deregulation is statistically and significantly associated with increases in the number of special access lines at the state level, even controlling for population, the size of the state's economy, per capita income, and state and year fixed effects.³¹

And, as intended by the Commission in adopting pricing flexibility, Embarq increasingly negotiates pricing flexibility contract tariffs with wireless and wireline carriers. In recognition of the significant competition in the marketplace, these contracts are currently providing and should continue providing these carriers with significant savings for critical services, all as intended by the Commission in adopting the *Pricing Flexibility Order*. There is certainly no justification on this record, or otherwise, to sustain eliminating this market driven pricing system.

Because pricing flexibility is working in the MSAs where granted, the Commission should, with just a few modifications, noted below, allow them to continue. There is certainly nothing on the record that sustains the rolling back of either price caps or pricing flexibility. As with the Long Distance market, if the Commission will continue to foster market-based pricing

³¹ *Wallsten* at p.2. It is interesting to note that while *Wallsten* was critical of the lack of data from competitive providers, the data the *Wallsten* has available is the same as the data currently on the record in this proceeding.

through individual contracts and arm's length negotiations, competition will flourish and true market-based pricing will be achieved.

As noted, some modifications are needed. First, the collocation triggers for pricing flexibility are, if anything, under-inclusive. Even in adopting the *Pricing Flexibility Order* in 1999, the Commission acknowledged that this might be a problem.

We recognize, however, that evidence of collocation may underestimate the extent of competitive facilities within a wire center, because it fails to account for the presence of competitors that do not use collocation and have wholly bypassed incumbent LEC facilities.³²

In 1999, this was not as much of a problem as it is today because cable and other inter-modal competitors that have no need for collocation have entered the market and are increasingly replacing the ILEC for special access services.

This problem of failing to account for the presence of competitors is further exasperated by the combination of the collocation requirement with the revenue test. To get Phase II relief for channel terminations between the ILEC end office and customer premises the ILEC has to have at least one collocater in wire centers accounting for 85% of the ILEC's revenues from channel terminations between its end offices and the customer premises or have collocators in 65% of the ILEC's wirecenters. To obtain Phase II relief for dedicated transport and other special access services, the ILEC has to have at least one collocater in at least 50% of its wire centers or has to have wire centers accounting for 65% of the ILEC's revenues from dedicated transport and other special access services. *See*, FCC Rules 69.709 and 69.711 (47 C.F.R. §§ 69.709, 69.711).

³² *Pricing Flexibility Order*, at 14272, ¶ 95.

These tests could not be met in areas where Embarq had collocated facilities-based competitors prior to the adoption of pricing flexibility, because once the collocator has started operating and serving customers, the ILEC no longer receives that customer revenue. This causes the revenue for the offices where the competitors are already collocated to decline from then on, meaning the ILEC has a smaller percentage of the revenue in the collocated offices.

Good examples of this for Embarq include the Fort Myers, Florida MSA where competition existed before the adoption of pricing flexibility. This competition had already taken the revenue from Embarq and thus when Embarq examines revenue after that point the thresholds for Phase II pricing flexibility could not be met notwithstanding the presence of substantial facilities-based competition

Another example, from Embarq's Missouri territory, deals with the problems with RSAs. In Missouri, because Embarq's territory it is not an MSA, Embarq has to use the total state of Missouri less the MSAs that exist in the state (Kansas City, St. Louis, Joplin, Columbia, St. Joseph, and Springfield). This creates very large revenue thresholds compared to only the revenue in Rolla, Missouri, for example, where Embarq has a significant facilities-based collocator. Therefore Embarq has not been able to qualify for Phase II relief and as the collocating facilities-based competitor takes more and more of the revenue generated in Rolla, Missouri. Embarq may never have the opportunity to qualify unless a new facilities-based competitor collocates in another office. Clearly, this is not a result intended or appropriate for a system designed to grant pricing flexibility in the presence of facilities-based competition.

Additionally, the requirement that ILECs, and only ILECs, have to publicly file their pricing flexibility contract tariffs **MUST** be changed (*See*, FCC Rules 61.55 [47 C.F.R. § 61.55],

61.58 [47 C.F.R. § 61.58], and 69.727 [47 C.F.R. § 69.727]). Publicly filing what is often the ILEC's "best" price sends a public signal of a new price floor, a bottom level for prices, for that service. Competitors know they just have to beat that price by a small amount. Not only is it unfair to the ILECs, who do not have such advance information about their competitors' pricing, but it is unfair to customers because it prevents all providers of the service, including the ILEC, from engaging in the kind of true pricing competition that efficiently leads to the lowest price.

The Commission has already recognized that there are no barriers to entry or other impairment to the deployment of OCn services.

The Commission previously unbundled all transport capacities up "through OC192 and such higher capacities as evolve over time." (Citation omitted.) We do not perpetuate such broad unbundling today. As described above, we find that requesting carriers are not impaired without lit transport beyond twelve DS3s on a route due to the ability to self-provision transport facilities, or to self-provision optronic equipment necessary to activate unbundled dark fiber. Because we find no impairment above a twelve DS3 level and transport below this level is unbundled, we need not unbundle OCn interface transmission facilities. Rather, we find that dark fiber and multiple DS3 circuits provide reasonable substitutes for OCn interface circuits at these capacities and find that requesting carriers are not impaired without OCn or SONET interface transport.³³

And, as shown on Attachment 2, Declaration of Michael Jewell, not only are there no barriers to entry for OCn services, but in fact numerous competitors are successfully competing throughout Embarq's territory for OCn services. The lack of any barrier to entry and the actual fact of proliferating entry by multiple entities using multiple technologies demonstrates that Phase I pricing flexibility, at a minimum, should be granted nationwide pricing flexibility rather than burdening the ILEC and the Commission staff with MSA Petitions and proceedings.

³³ *Triennial Review Order*, at 17221, ¶ 389.

VI. The FCC seeks comments on the following questions.

- A. What effect, if any, have the post *Special Access NPRM* mergers and other industry consolidation (*Verizon-MCI*, *AT&T-SBC-BellSouth*, *Sprint-Nextel*) had on the availability of competitive special access facilities and providers and on scale economies or the profitability of special access services?**

The three major post *Special Access NPRM* mergers that need to be considered can be divided into two categories. The first category includes the merger of Verizon with MCI (hereinafter “Verizon”) and the merger of SBC with AT&T and then with BellSouth (hereinafter “AT&T”). The second category, while different but equally important for this proceeding, is the merger of Sprint with Nextel.

The first category involves mergers that created two large communications companies; either owning, or having access to, nationwide wired and wireless networks and facilities that provide a variety of services on a truly coast-to-coast basis. The services include incumbent local and competitive long distance telecommunications services, wireless voice and data services, high-speed internet services, special and switched access services, Interconnected VoIP services, and increasingly, multichannel video programming.

Prior to the merger Verizon and AT&T were, for the most part, neighboring ILECs to Embarq. Now, they are still neighboring ILECs, but through their various affiliates they compete with Embarq for long distance customers, wireless customers, and special access customers all while also being a special and switched access customer. These mergers, more than any other ILEC classification scheme in the past based on size or price caps versus rate regulated, distinguishes Verizon and AT&T from the rest of the ILECs and puts them into a category all their own. This fact does not mean that either Verizon’s or AT&T’s special access rates or rates of return are unreasonable or excessive. Indeed, both merged entities made certain

special access commitments as part of their merger approval process. Rather, the point is simply to answer the Commission's question and acknowledge the fact that these mergers have changed the competitive landscape for special access services.

While lacking the ILEC component,³⁴ the merger of Sprint and Nextel creates a much larger carrier with a nationwide wired and wireless network.³⁵ While considerably different from the new Verizon or the new AT&T, the Sprint-Nextel merger presents similar observations. With all three mergers, Embarq is seeing the carriers consolidate their networks; eliminating some demand for special access circuits and putting downward pressure on pricing through their increased negotiating power due to their greater size and due to the nature of volume discounts.

Both categories of mergers though have had similar effects. Prior to the mergers, two entities were purchasing special access at a set point on volume discount scales. Through merger synergies, the newly merged carrier has been able to consolidate networks, decreasing the total amount of special access that was purchased by the separate pre-merger entities. Even with this decrease, the volume of the newly merged entity is still greater than the volume of the individual pre-merger entities, qualifying the newly merged entity for an even greater volume discount. For ILECs like Embarq, this effect has created a truly double-edged sword as demand decreases at the same time that rates are forced downward. This simple economic fact, in turn, makes it even more difficult to fund new and higher capacity builds.

³⁴ Following the merger of Sprint and Nextel, the former Sprint's incumbent local exchange carriers were spun off in May 2006 to become Embarq.

³⁵ Interestingly, the merger of Sprint with Nextel also led to the creation of Embarq as a product of a counter-trend to mergers; a split, which adds more players to the special access mix. Indeed, this split was the antithesis of the trend of many recent mergers, de-integrating a previously integrated carrier.

Intuitively though, one would think the efficiencies and savings the merged entity sees would make it easier for the merged entity to build for itself – especially if rates of return are as excessive as some claim. The fact that the newly merged entities continue to lease rather than build is perhaps the best evidence that neither ILEC rates nor rates of return are excessive or unreasonable.

B. How does special access pricing affect the price and availability of wireless services and the investment in and deployment of wireless networks?

The pricing of special access has negligible, if any, impact on the availability of, and investment in new wireless networks. The allegations that special access pricing, and particularly the pricing of Special Access Channel Terminations providing connections to wireless network tower locations, present a substantial deterrent to establishing more wireless tower locations is not credible. The costs to construct new wireless tower locations will vary, but can be reasonably estimated to range from a low of approximately \$400,000, to figures much higher, depending on site acquisition costs and fees, as well as traffic volumes driving electronic equipment requirements and costs. The often advanced suggestion that the relative operating costs (including capital recovery, cost of capital, and maintenance) of these large investments are so adversely affected by the much smaller lease costs of Special Access Channel Terminations so as to inhibit their construction is, at best, simply not believable.

While any carrier would no doubt be happy to receive a price decrease of any kind or of any size, including one for special access channel termination rates, such a relatively minor decrease to its overall costs could not, and would not equate, to any massive enabling of new

wireless tower build-outs. It is a hollow allegation, woefully void of meaningful cause and effect economics.

C. What are the appropriate methods that may be used to estimate the costs of special access facilities, including whether any models may appropriately be used to estimate such costs?

As commented on above, any focus on alleged earnings derived from ARMIS filing data is grossly misleading and misplaced. At the heart of this misleading analysis and its companion illusion of inflated earnings, are the use of severely outdated frozen jurisdictional separation factors and the allocation of cost among multiple services and across interstate and intrastate jurisdictions pursuant to regulatory fiat, not prudent business decisions. For that reason Embarq believes the question asked regarding the potential usefulness of forward-looking cost models (as opposed to focusing on, for instance, ARMIS data), should be answered affirmatively.

Embarq believes that done correctly, the use of forward-looking cost modeling could provide more meaningful understandings for the relative cost of providing service and for economic earnings levels of Special Access services and would prove considerably more useful in understanding the relative earnings levels of Special Access services, than would reliance on the undeniably outdated ARMIS data.

D. What is the projected cost per customer to deploy the significant upgrades carriers have made to their networks and facilities to enable high capacity services?

The projected cost per customer to deploy network upgrades to enable high capacity services is highly variable. The single most impacting variable is the total demand for high capacity services traversing over any given cable route for which network upgrades are being

evaluated. As discussed elsewhere in these comments, the cost of constructing fiber cable is not variable to the bandwidth of circuits placed over that cable. So relatively low demand cable routes, requiring only a few DS1 circuits of market demand, will exhibit a much higher unit cost per DS1, than will a route with much greater total demand for circuits, e.g., DS3s, OCn levels of bandwidth demand. Thus a single figure cannot be used to represent diverse market demand for circuits on a cable route, and its resulting per customer unit cost. What can be understood and consistently predicted however is that routes with more demand for circuits will more easily justify the costs to upgrade the underlying cable facilities from copper to fiber as well as the accompanying SONET optical terminal equipment costs.

During 2007 Embarq increased spending on fiber by approximately 300% to serve wireless carrier needs on higher capacity sites in metro areas that are relatively close to existing fiber. The wireless carriers demand fiber buildouts while continuing to press for lower prices on all services. Embarq's rationale for overbuilding fiber where the services are currently provided via copper include re-investment in the Embarq network to maintain our high quality of service, efforts to meet competition in metropolitan locations, and extending fiber in the network in locations where Embarq can earn a reasonable return on investment.

E. Are DS1 Special Access channel terminations between the ILEC end office and the customer premise in the same product market as DS3 and OCn channel terminations? If not, should the Commission go even further and subdivide optical channel terminations into low capacity OCn channel terminations (such as OC3) and higher capacity OCn channel terminations?

There is a difference between low capacity DS1 channel terminations and higher capacity services. Because of their lower capacity, DS1s are not capable of generating as significant revenue for the carriers as a higher capacity pipe. That fact combined with the simple truth that

the cost to build a DS1 does not decline proportionately versus the cost to build a higher capacity pipe e.g., DS3 (as some might suspect given the significant decline in relative bandwidth) suggests that DS1s should be looked at separately from higher capacity services. For example, while the relative bandwidth decline in a fiber cable carrying a DS3 circuit versus the same cable carrying a DS1 circuit is a factor of 28, the underlying fiber cable construction cost is unaffected. Indeed, the underlying fiber cable construction costs do not decline proportionately to the relative bandwidth declines of circuits traversing over the fiber cable, the cost of a relatively low bandwidth DS1 circuit is not going to be $1/28^{\text{th}}$ of the cost of a DS3 circuit. This basic economic reality has previously been recognized by the Commission:

However, as we discuss above, the cost of deploying a transmission facility does not vary significantly with capacity because much of the cost of the facility is related to the deployment itself, such as trenching or attaching to poles, rather than the cost of the cabling and other equipment.³⁶

And, because the traffic on a smaller capacity circuit is usually less than on higher capacity pipes, there generally will be less revenue for the special access customer to be used to offset the cost.³⁷ This cost-revenue issue likely means that as carriers perform their lease-build analysis they are less likely to come up with a make decision for lower capacity DS1 circuits. It also means that rates for DS1s circuits will on a per-capacity basis be higher, reflecting the

³⁶ *Review of the Section 251 Unbundling Obligation of Incumbent Local Exchange Carriers Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, 189 FCC Rcd 16978 (2003)(“Triennial Review Order”) at 17217, ¶ 386.

³⁷ The Commission has noted this economic truth in a comparison of DS3s versus higher capacity OCn pipes. (“The potential revenue stream associated with a single DS3 is far less than the revenue stream associated with aggregating traffic that requires an OCn circuit.” *Id.*, at 17218, n. 1195.) The same holds true for DS1 pipes versus DS3 and OCn.

higher cost to build. This does not mean however, that DS1 rates are unreasonable or are not reflective of economic cost.

Likewise, OCn services are different from DS1 and DS3 and should be treated as a separate product market. As noted above in Section V, the Commission has already recognized that there are no barriers to entry or other impairment to the deployment of OCn services.

As shown on Attachment 2, Declaration of Michael Jewell, not only are there no barriers to entry for OCn services, but in fact numerous competitors are successfully competing throughout Embarq's territory for OCn services. The lack of any barrier to entry and the proliferation of multiple competing providers demonstrates that OCn services should be viewed as a separate product market and that Phase I pricing flexibility, at a minimum, should be granted nationwide rather than burdening Commission staff with an MSA showing.

F. How much capacity do carriers believe is necessary to justify building new facilities?

It is difficult to develop a one-size fits all cross-over point that determines when a carrier will choose to build or buy. Many factors may come into play including the financial means of the carrier and technology. Because the merger activity is creating larger entities with increased buying power and, as noted below, because new technology is making the deployment of services comparable to special access (e.g., Interconnected VoIP, Broadband wireless) more efficient and less expensive, Embarq believes many carriers are more likely to utilize or build their own facilities.

G. Is there a lack of comparable alternatives to any specific ILEC Special Access services and if so, is that a demonstration that the market for the particular Special Access service is not competitive?

Just as there is no lack of competitive providers, there is no lack of comparable alternatives to ILEC special access services. Fixed and mobile wireless, cable, WiFi, and Interconnected VoIP all provide varying types of special access substitutes or comparables. Increasingly, these new services make use of more efficient technology which is easier for a new entrant, free of legacy circuit switched infrastructure, network, and regulation, to build. Both the ease of entry and the increased supply created by the comparable services place competitive pressure on ILEC special access service and prices. Not only is there abundance of comparable alternatives, but with the rapid pace of technological changes in the communications industry, it is reasonable to believe these alternatives will continue to grow.

H. Have any changes in the market affected the availability of comparable alternatives?

Changes in technology in the communications world have been fast and furious in recent years and have had a major impact on the availability of comparable alternatives and on ILEC behavior. As noted above, new developments such as packet switching, Interconnected VoIP, fixed wireless, computer-to-computer voice services, WiMax, and broadband mobile wireless are all creating comparable alternatives to ILEC Special Access services. Generally, these new services are less expensive to deploy and provide an effective means for transporting ever increasing amounts of voice, video, and data at ever increasing speeds. However, these savings and efficiencies generally go to the new entrants rather than to ILECs with sunk investment in legacy, increasingly inefficient circuit switched infrastructure and systems. These new

technologies are creating competitors with new, efficient networks and technology and creating market pressure on the ILECs to maintain reasonable rates and increased quality of service.

Furthermore, the technological changes that are providing efficient and effective means for new entrants to enter ILEC special access markets and effectively compete is creating contestable markets.³⁸ In a contestable market, the incumbent firm cannot act in an opportunistic manner with regard to pricing, output, or other firm-determined variables because in such a case, competitors will enter and win customers from the incumbent. When a market is *contestable*

The possibility of entry by new firms can greatly constrain the exercise of monopoly power...the threat of entry, as well as actual entry, can have a significant impact on the pricing behavior of firms. In addition, it shows why the number of firms operating in a market does not always have a direct relationship with the amount of monopoly power exercised.³⁹

Thus, the technology changes are furthering competition and will continue to further increased competition and the consequent pricing pressure, thus even further supporting, with the modifications discussed above, the current price cap and pricing flexibility systems.

I. The Commission also seeks comment on the analysis and findings in the *GAO Report* summarizing GAO's review of competition in the market for Special Access services.

The GAO determined that the FCC's record was insufficient to determine the state of competition for Special Access and that "[w]ithout data that are reliable, relevant, and current, FCC is limited in its ability to adequately monitor the state of competition for dedicated access, and thus is limited in its ability to determine whether its deregulatory actions are achieving their

³⁸ A contestable market is one in which "the mere possibility of entry suffices to discipline the actions of incumbent suppliers." See, Browning and Zupan, *Microeconomic Theory and Applications*, Addison-Wesley, 1999 (Sixth Edition).

³⁹ *ibid*, pp.290-292

goals.”⁴⁰ The *GAO Report* did not find that ILEC rates of return are unreasonable or that price increases have been rampant.

Far from recommending that any changes to the existing Special Access regime are necessary or desirable, GAO simply recommends (which recommendation Embarq agrees with) that the FCC needs a more meaningful and workable definition of effective competition and that the FCC needs better data collection efforts so that it can truly assess the competitive situation. Absent such data collection from all providers – cable, CLECs, Wireless (Fixed and Mobile) Carriers, WiFi, Interconnected VoIP providers, and other new entrants – a complete record upon which to base any roll-back of the current price cap and pricing flexibility system will not exist.

VII. Conclusion

There is no record evidence at this point capable of sustaining a roll-back of price cap regulation or pricing flexibility. Indeed, until the Commission starts the necessary data collection process, as strongly urged by the *GAO Report*, it seems unlikely that such a record will ever exist.

While the evidence is not as robust as it needs to be, the evidence that exists demonstrates that price cap and pricing flexibility where granted, are working as intended. And, it can reasonably be expected that additional data will only further support that competition is robust and that current systems are, within the limitations cause by triggers that do not fully account for competition, working as intended. Inter-modal and intra-modal facilities-based competition is growing. Newer technologies offering efficiencies are being deployed to provide comparable

⁴⁰ *GAO Report*, at p. 43.

August 8, 2007

alternatives to ILEC special access services. This competitive pressure is exerting an influence on ILEC rates, which are reasonable and in many cases declining.

The only problems in need of a solution are that the pricing triggers are not right and the public filing of ILEC pricing flexibility contracts cause an artificial price floor. The pricing flexibility triggers are under-inclusive in terms of properly identifying areas where the ILEC has facilities-based competition. Making ILEC contract tariffs public creates a price floor that stifles robust price competition, thereby ultimately harming the consumer. Clearly, the only needed reforms and the only reforms for which an adequate record can exist, given the dearth of data from competitors, is with the pricing flexibility triggers and the public filing of ILEC pricing flexibility contract tariffs.

Respectfully submitted,

Embarq

By: 

Craig T. Smith
5454 W. 110th Street
Overland Park, KS 66211
(913) 345-6691

David Bartlett
Jeffrey S. Lanning
Brian Adkins
701 Pennsylvania Ave. N.W.
Suite 820
Washington, DC 20004
(202) 393-7113

August 8, 2007

August 8, 2007

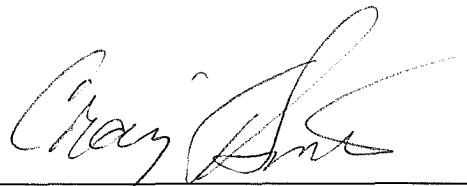
CERTIFICATE OF SERVICE

I, Craig T. Smith, do hereby certify that on this 8th day of August, 2007, I caused true and correct copies of the foregoing Comments of Embarq was served by electronic mail upon the following:

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554
(via ECFS)

Margaret Dailey
Pricing Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554
Margaret.Dailey@fcc.gov

Best Copy and Printing, Inc.*
Portals II
445 12th Street SW
Washington, DC 20554
fcc@bcpiweb.com



CRAIG T. SMITH